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September 2, 2015					
FEDERAL MARITIME COMMISSION					

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DOCKET NO. 14-10

ECONOCARIBE CONSOLIDATORS, INC.

v.

AMOY INTERNATIONAL, LLC

**INITIAL DECISION APPROVING JOINT SETTLEMENT AND
GRANTING MOTION TO DISMISS**

I. Background

Complainant Econocaribe Consolidators, Inc. (“Econocaribe”) filed a complaint alleging that Respondent Amoy International, LLC (“Amoy”) violated the Shipping Act of 1984 (“Shipping Act”), 46 U.S.C. § 40101 et seq., and Federal Maritime Commission regulations. A notice of filing of complaint and assignment was issued on August 14, 2014. On September 9, 2014, Amoy filed its answer denying the allegations.

The parties engaged in discovery and filed a number of motions. On March 10, 2015, an Order on Complainant’s Motion for Summary Judgment and an Order on Complainant’s Motion to Compel and Request for Oral Argument and on Respondent’s Objection to Exhibit were issued. The parties filed briefs on the merits and filed additional motions.

In a status report on July 6, 2015, the parties indicated that they were finalizing a settlement agreement. At a pre-hearing telephone conference on July 13, 2015, the parties indicated that no final agreement had been reached and they were provided additional time to attempt to resolve the proceeding prior to the issuance of an Initial Decision. On July 20, 2015, the parties signed a settlement agreement. On August 20, 2015, the parties filed a joint motion for approval of settlement agreement and dismissal without prejudice.

The settlement agreement requires an initial payment by Amoy, followed by monthly installment payments, with the parties bearing their own attorney’s fees and litigation costs. Settlement Agreement at 4. The parties indicate that they:

have litigated facts and issues giving rise to this Complaint in both the FMC and the United States District Court for the Southern District of Florida. As discussed above, there are bona fide disagreements between Complainant and Respondent as to certain facts and legal issues. Although each side is confident it would prevail, the outcome of any litigation is uncertain. In view of the litigative probabilities and the probability that this proceeding will continue to be complicated, time consuming, and costly, the proposed Settlement Agreement, which dismisses all FMC claims without prejudice, would save all Parties time and expense.

Joint Motion at 4.

II. Settlement Standards

Using language borrowed in part from the Administrative Procedure Act, Rule 91 of the Commission's Rules of Practice and Procedure gives interested parties an opportunity, *inter alia*, to submit offers of settlement "where time, the nature of the proceeding, and the public interest permit." 46 C.F.R. § 502.91(b).

The Commission has a strong and consistent policy of "encourag[ing] settlements and engag[ing] in every presumption which favors a finding that they are fair, correct, and valid." *Inlet Fish Producers, Inc. v. Sea-Land Serv., Inc.*, 29 S.R.R. 975, 978 (ALJ 2002), quoting *Old Ben Coal Co. v. Sea-Land Serv., Inc.*, 18 S.R.R. 1085, 1091 (ALJ 1978) (*Old Ben Coal*). See also *Ellenville Handle Works, Inc. v. Far Eastern Shipping Co.*, 20 S.R.R. 761, 762 (ALJ 1981).

The law favors the resolution of controversies and uncertainties through compromise and settlement rather than through litigation, and it is the policy of the law to uphold and enforce such contracts if they are fairly made and are not in contravention of some law or public policy. . . . The courts have considered it their duty to encourage rather than to discourage parties in resorting to compromise as a mode of adjusting conflicting claims. . . . The desire to uphold compromises and settlements is based upon various advantages which they have over litigation. The resolution of controversies by means of compromise and settlement is generally faster and less expensive than litigation; it results in a saving of time for the parties, the lawyers, and the courts, and it is thus advantageous to judicial administration, and, in turn, to government as a whole. Moreover, the use of compromise and settlement is conducive to amicable and peaceful relations between the parties to a controversy.

Old Ben Coal, 18 S.R.R. at 1092 (quoting 15A American Jurisprudence, 2d Edition, pp. 777-78 (1976)).

"While following these general principles, the Commission does not merely rubber stamp any proffered settlement, no matter how anxious the parties may be to terminate their litigation." *Id.* However, if "a proffered settlement does not appear to violate any law or policy and is free of fraud, duress, undue influence, mistake or other defects which might make it unapprovable despite

the strong policy of the law encouraging approval of settlements, the settlement will probably pass muster and receive approval.” *Old Ben Coal*, 18 S.R.R. at 1093. “[I]f it is the considered judgment of the parties that whatever benefits might result from vindication of their positions would be outweighed by the costs of continued litigation and if the settlement otherwise complies with law the Commission authorizes the settlement.” *Delhi Petroleum Pty. Ltd. v. U.S. Atlantic & Gulf/Australia – New Zealand Conf. and Columbus Line, Inc.*, 24 S.R.R. 1129, 1134 (ALJ 1988) (citations omitted).

“Reaching a settlement allows the parties to settle their differences, without an admission of a violation of law by the respondent, when both the complainant and respondent have decided that it would be much cheaper to settle on such terms than to seek to prevail after expensive litigation.” *APM Terminals North America, Inc. v. Port Authority of New York and New Jersey*, 31 S.R.R. 623, 626 (FMC 2009) (citing *Puerto Rico Freight Sys. Inc. v. PR Logistics Corp.*, 30 S.R.R. 310, 311 (ALJ 2004)).

The parties both indicate that they believe they would prevail, but that they “recognize the potential for the remaining costs of this litigation being extremely high and the inherent uncertainties in heavily disputed litigation, therefore the parties agreed to” settlement discussions which led to the settlement agreement. Joint Motion at 2. The parties are both represented by counsel and have engaged in negotiations facilitated by a Federal Maritime Commission mediator. Joint Motion at 4. The parties have “reviewed the relevant documents, engaged in months of discussions and negotiations, and have determined that the mutual concessions made fairly address the outstanding issues between them.” Joint Motion at 4.

Based on the representations in the Joint Motion, the Settlement Agreement, and other documents filed in this matter, the agreement does not appear to violate any law or policy and is free of fraud, duress, undue influence, mistake, or other defects which might make it unapprovable. Accordingly, the Settlement Agreement is hereby approved.

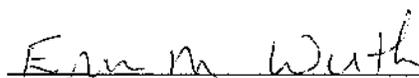
IV. Order

For the above stated reasons, it is

ORDERED that the Settlement Agreement between Econocaribe Consolidators, Inc. and Amoy International, LLC be **APPROVED**. It is

FURTHER ORDERED that all pending motions be dismissed as moot. It is

FURTHER ORDERED that this proceeding be dismissed without prejudice.



Erin M. Wirth
Administrative Law Judge